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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

NANCY JAUREGUI, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED, a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2024-01400634-CU-OE-CXC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200;
 2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
 3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
 4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
 9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246.
 10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, et seq.]
- DEMAND FOR A JURY TRIAL**

1 Nancy Jauregui (“PLAINTIFF”), an individual, on behalf of herself and all other similarly
2 situated current and former employees allege on information and belief, except for her own acts
3 and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. Merrill Lynch, Pierce, Fenner & Smith Incorporated (“DEFENDANT”) is a
7 Corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in California.

9 2. DEFENDANT is a registered broker dealer and investment advisor.

10 3. PLAINTIFF was employed by DEFENDANT in California from 2008 to August
11 31, 2023. PLAINTIFF was at all times classified by DEFENDANT as a non-exempt employee,
12 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
13 of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California,
16 including any employees staffed with DEFENDANT by a third party, and classified as
17 non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning
18 May 20, 2020, and ending on the date as determined by the Court (the “CALIFORNIA CLASS
19 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
20 Members is under five million dollars (\$5,000,000.00).

21 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
23 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice
24 which failed to lawfully compensate these employees. DEFENDANT's policy and practice
25 alleged herein was an unlawful, unfair and deceptive business practice whereby
26 DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other
27 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
28 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the

1 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
2 CLASS who have been economically injured by DEFENDANT's past and current unlawful
3 conduct, and all other appropriate legal and equitable relief.

4 6. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names
7 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint
8 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
9 ascertained. PLAINTIFF is informed and believe, and based upon that information and
10 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
11 inclusive, are responsible in some manner for one or more of the events and happenings that
12 proximately caused the injuries and damages hereinafter alleged.

13 7. The agents, servants and/or employees of the Defendants and each of them
14 acting on behalf of the Defendants acted within the course and scope of his, her or its
15 authority as the agent, servant and/or employee of the Defendants, and personally participated
16 in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged
17 herein. Consequently, the acts of each Defendant are legally attributable to the other
18 Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other
19 members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the
20 conduct of the Defendants' agents, servants and/or employees.

21 22 **THE CONDUCT**

23 Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer,
26 including all the time the employee is suffered or permitted to work. DEFENDANT requires
27 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the
28 time they are under DEFENDANT's control. Among other things, DEFENDANT requires

1 PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty
2 meal break. PLAINTIFF were from time to time interrupted by work assignments while
3 clocked out for what should have been PLAINTIFF' off-duty meal break. DEFENDANT, as
4 a matter of established company policy and procedure, administers a uniform practice of
5 rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS
6 Members, always to the benefit of DEFENDANT, so that during the course of their
7 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they
8 would have been paid had they been paid for actual recorded time rather than "rounded"
9 time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and
10 CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a
11 condition of employment, required these employees to submit to mandatory temperature
12 checks and symptom questionnaires for COVID-19 screening prior to clocking into
13 DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and other
14 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and
15 off-duty meal breaks by working without their time being correctly recorded and without
16 compensation at the applicable rates. DEFENDANT's policy and practice not to pay
17 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
18 DEFENDANT's business records.

19 9. State and federal law provides that employees must be paid overtime and meal
20 and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF
21 and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive
22 pay that is tied to specific elements of an employee's performance.

23 10. The second component of PLAINTIFF' and other CALIFORNIA CLASS
24 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANT. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
28 various performance goals set by DEFENDANT. However, when calculating the regular rate

1 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and other
2 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
3 compensation as part of the employees' "regular rate of pay" for purposes of calculating
4 overtime pay and meal and rest break premium pay. Management and supervisors described
5 the incentive program to potential and new employees as part of the compensation package.
6 As a matter of law, the incentive compensation received by PLAINTIFF and other
7 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
8 to do so has resulted in a underpayment of overtime compensation and meal and rest break
9 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

10 11. As a result of their rigorous work schedules, PLAINTIFF and other
11 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
12 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
13 other CALIFORNIA CLASS Members were required from time to time to perform work as
14 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
15 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
16 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
17 which these employees were required by DEFENDANT to work ten (10) hours of work.
18 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
19 paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF
20 and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without
21 additional compensation and in accordance with DEFENDANT's corporate policy and
22 practice.

23 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of
25 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
26 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
27 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
28 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time,

1 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
2 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS
3 Members were also not provided with one hour wages in lieu thereof. Additionally, the
4 applicable California Wage Order requires employers to provide employees with off-duty rest
5 periods, which the California Supreme Court defined as time during which an employee is
6 relieved from all work related duties and free from employer control. In so doing, the Court
7 held that the requirement under California law that employers authorize and permit all
8 employees to take rest period means that employers must relieve employees of all duties and
9 relinquish control over how employees spend their time which includes control over the
10 locations where employees may take their rest period. Employers cannot impose controls that
11 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
12 DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members
13 from unconstrained walks and is unlawful based on DEFENDANT's rule which states
14 PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work premises
15 during their rest period.

16 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
17 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
18 actual amount of time these employees worked. Pursuant to the Industrial Welfare
19 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
21 employee was subject to the control of an employer, including all the time the employee was
22 permitted or suffered to permit this work. DEFENDANT required these employees to work
23 off the clock without paying them for all the time they were under DEFENDANT's control.
24 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
26 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
27 working without their time being accurately recorded and without compensation at the
28 applicable minimum wage and overtime wage rates. To the extent that the time worked off

1 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
2 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
3 1197, and 1197.1.

4 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
5 other members of the CALIFORNIA CLASS with complete and accurate wage statements
6 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
7 Code § 226 provides that every employer shall furnish each of his or her employees with an
8 accurate itemized wage statement in writing showing, among other things, gross wages
9 earned and all applicable hourly rates in effect during the pay period and the corresponding
10 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
11 Members were paid on an hourly basis. As such, the wage statements should reflect all
12 applicable hourly rates during the pay period and the total hours worked, and the applicable
13 pay period in which the wages were earned pursuant to California Labor Code Section
14 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
15 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
16 wage statements failed to identify the accurate total hours worked each pay period. When the
17 hours shown on the wage statements were added up, they did not equal the actual total hours
18 worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the
19 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
20 itemized wage statement that lists all the requirements under California Labor Code 226. As a
21 result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
22 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

23 15. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
24 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
25 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
26 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
27 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
28 Members at their base rates of pay.

1 16. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
2 employees be calculated by dividing the employee's total wages, not including overtime
3 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
4 days of employment.

5 17. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
6 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned
7 non-discretionary incentive wages which increased their regular rate of pay. However, when
8 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and members of the
9 CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required
10 under Cal. Lab. Code Section 246.

11 18. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
12 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
13 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF are
14 informed and believe and based thereon allege that such failure to pay sick pay at regular rate
15 was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
16 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
17 Sections 201-203.

18 19. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
19 to collect or receive from an employee any part of wages theretofore paid by said employer to
20 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
21 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
22 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
23 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF
24 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
25 employees all wages due at each applicable pay period and upon termination. PLAINTIFF
26 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
27 deductions from wages according to proof, related penalties, interest, attorney fees and costs.
28

1 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
2 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
3 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
4 consequence of discharging their duties on behalf of DEFENDANT. Under California Labor
5 Code Section 2802, employers are required to indemnify employees for all expenses incurred
6 in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an
7 employer shall indemnify his or her employee for all necessary expenditures or losses
8 incurred by the employee in direct consequence of the discharge of his or her duties, or of his
9 or her obedience to the directions of the employer, even though unlawful, unless the
10 employee, at the time of obeying the directions, believed them to be unlawful."

11 21. In the course of their employment PLAINTIFF and other CALIFORNIA
12 CLASS Members as a business expense, were required by DEFENDANT to use their own
13 personal cellular phones as a result of and in furtherance of their job duties as employees for
14 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
15 associated with the use of their personal cellular phones for DEFENDANT's benefit.
16 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
17 DEFENDANT to use their personal cellular phones. As a result, in the course of their
18 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
19 CLASS incurred unreimbursed business expenses which included, but were not limited to,
20 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
21 DEFENDANT.

22 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
23 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
24 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
25 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
26 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
27 PLAINTIFF' missed meal and rest breaks. The nature of the work performed by the
28 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF' duties

1 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
2 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
3 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or
4 value of \$75,000.

5 **JURISDICTION AND VENUE**

6 23. This Court has jurisdiction over this Action pursuant to California Code of
7 Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203.
8 This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated
9 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

10 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
12 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
13 facilities in this County and/or conducts substantial business in this County, and (ii)
14 committed the wrongful conduct herein alleged in this County against members of the
15 CALIFORNIA CLASS.

16 **THE CALIFORNIA CLASS**

17 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
18 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, (the "UCL") as a
19 Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,
20 defined as all individuals who are or previously were employed by DEFENDANT in
21 California, including any employees staffed with DEFENDANT by a third party, and
22 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
23 period beginning May 20, 2020, and ending on the date as determined by the Court (the
24 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
25 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).
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1 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
3 accordingly.

4 27. DEFENDANT, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest
8 breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
9 DEFENDANT enjoyed the benefit of this work, required employees to perform this work
10 and permits or suffers to permit this work.

11 28. DEFENDANT has the legal burden to establish that each and every
12 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
13 required by California laws. The DEFENDANT, however, as a matter of policy and
14 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to
15 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
16 Member is paid as required by law. This common business practice is applicable to each and
17 every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful,
18 unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, (the "UCL") as
19 causation, damages, and reliance are not elements of this claim.

20 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

22 30. DEFENDANT violated the rights of the CALIFORNIA CLASS under
23 California law by:

- 24 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
25 Prof. Code §§ 17200, (the "UCL"), by unlawfully, unfairly and/or
26 deceptively having in place company policies, practices and procedures
27 that failed to record and pay PLAINTIFF and the other members of the
28 CALIFORNIA CLASS for all time worked, including minimum wages

1 owed and overtime wages owed for work performed by these
2 employees; and,

- 3 (b) Committing an act of unfair competition in violation of the UCL, by
4 failing to provide the PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with the legally required meal and rest periods.

6 31. This Class Action meets the statutory prerequisites for the maintenance of a
7 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
9 that the joinder of all such persons is impracticable and the disposition
10 of their claims as a class will benefit the parties and the Court;
11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
12 issues that are raised in this Complaint are common to the
13 CALIFORNIA CLASS will apply to every member of the
14 CALIFORNIA CLASS;
15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
17 other members of the CALIFORNIA CLASS, were classified as non-
18 exempt employees paid on an hourly basis who were subjected to the
19 DEFENDANT's deceptive practice and policy which failed to provide
20 the legally required meal and rest periods to the CALIFORNIA CLASS
21 and thereby underpaid compensation to PLAINTIFF and CALIFORNIA
22 CLASS. PLAINTIFF sustained economic injury as a result of
23 DEFENDANT's employment practices. PLAINTIFF and the members
24 of the CALIFORNIA CLASS were and are similarly or identically
25 harmed by the same unlawful, deceptive and unfair misconduct engaged
26 in by DEFENDANT; and,
27 (d) The representative PLAINTIFF will fairly and adequately represent and
28 protect the interest of the CALIFORNIA CLASS, and have retained

counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

32. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate

1 exclusively to restitution because through this claim PLAINTIFF
2 seek declaratory relief holding that the DEFENDANT's policy
3 and practices constitute unfair competition, along with
4 declaratory relief, injunctive relief, and incidental equitable relief
5 as may be necessary to prevent and remedy the conduct declared
6 to constitute unfair competition;

7 (c) Common questions of law and fact exist as to the members of the
8 CALIFORNIA CLASS, with respect to the practices and violations of
9 California law as listed above, and predominate over any question
10 affecting only individual CALIFORNIA CLASS Members, and a Class
11 Action is superior to other available methods for the fair and efficient
12 adjudication of the controversy, including consideration of:

- 13 1) The interests of the members of the CALIFORNIA CLASS in
14 individually controlling the prosecution or defense of separate
15 actions in that the substantial expense of individual actions will
16 be avoided to recover the relatively small amount of economic
17 losses sustained by the individual CALIFORNIA CLASS
18 Members when compared to the substantial expense and burden
19 of individual prosecution of this litigation;
- 20 2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:
 - 22 A. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA CLASS, which
24 would establish incompatible standards of conduct for the
25 DEFENDANT; and/or,
 - 26 B. Adjudications with respect to individual members of the
27 CALIFORNIA CLASS would as a practical matter be
28

dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

33. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will

1 avoid asserting their rights individually out of fear of retaliation or
2 adverse impact on their employment;

3 (c) The members of the CALIFORNIA CLASS are so numerous that it is
4 impractical to bring all members of the CALIFORNIA CLASS before
5 the Court;

6 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
7 be able to obtain effective and economic legal redress unless the action
8 is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and
10 equitable relief for the acts of unfair competition, statutory violations
11 and other improprieties, and in obtaining adequate compensation for the
12 damages and injuries which DEFENDANT's actions have inflicted upon
13 the CALIFORNIA CLASS;

14 (f) There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of
16 the CALIFORNIA CLASS for the injuries sustained;

17 (g) DEFENDANT has acted or refused to act on grounds generally
18 applicable to the CALIFORNIA CLASS, thereby making final class-
19 wide relief appropriate with respect to the CALIFORNIA CLASS as a
20 whole;

21 (h) The members of the CALIFORNIA CLASS are readily ascertainable
22 from the business records of DEFENDANT; and,

23 (i) Class treatment provides manageable judicial treatment calculated to
24 bring a efficient and rapid conclusion to all litigation of all wage and
25 hour related claims arising out of the conduct of DEFENDANT as to the
26 members of the CALIFORNIA CLASS.

1 34. DEFENDANT maintains records from which the Court can ascertain and
2 identify by job title each of DEFENDANT's employees who have been intentionally
3 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
4 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
5 similarly situated employees when they have been identified.

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

8 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
9 Eighth, Ninth and Tenth causes Action on behalf of a California sub-class, defined as all
10 members of the CALIFORNIA CLASS who are or previously were employed by
11 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
12 party, and classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS")
13 at any time during the period beginning May 20, 2021, and ending on the date as determined
14 by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code
15 of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA
16 LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

17 36. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
18 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
19 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
20 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
22 these employees, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.
24 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
25 which these employees are entitled in order to unfairly cheat the competition and unlawfully
26 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
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1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

3 37. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT's employees who have been
5 intentionally subjected to DEFENDANT's company policy, practices and procedures as
6 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional
7 job titles of similarly situated employees when they have been identified.

8 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

10 39. Common questions of law and fact exist as to members of the CALIFORNIA
11 LABOR SUB-CLASS, including, but not limited, to the following:

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 compensation due to members of the CALIFORNIA LABOR SUB-
14 CLASS for missed meal and rest breaks in violation of the California
15 Labor Code and California regulations and the applicable California
16 Wage Order;
- 17 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS with accurate
19 itemized wage statements;
- 20 (c) Whether DEFENDANT has engaged in unfair competition by the
21 above-listed conduct;
- 22 (d) The proper measure of damages and penalties owed to the members of
23 the CALIFORNIA LABOR SUB-CLASS; and,
- 24 (e) Whether DEFENDANT's conduct was willful.

25 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
26 under California law by:
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- 1 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
2 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
3 CLASS all wages due for overtime worked, for which DEFENDANT is
4 liable pursuant to Cal. Lab. Code § 1194;
- 5 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1, by failing to
6 accurately pay PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUB-CLASS the correct minimum wage pay for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 9 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
10 the members of the CALIFORNIA LABOR SUB-CLASS with an
11 accurate itemized statement in writing showing the corresponding
12 correct amount of wages earned by the employee;
- 13 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
14 PLAINTIFF and the other members of the CALIFORNIA LABOR
15 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
16 minute meal breaks and the legally required off-duty rest breaks;
- 17 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
18 when an employee is discharged or quits from employment, the
19 employer must pay the employee all wages due without abatement, by
20 failing to tender full payment and/or restitution of wages owed or in the
21 manner required by California law to the members of the CALIFORNIA
22 LABOR SUB-CLASS who have terminated their employment; and,
- 23 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
24 and the CALIFORNIA LABOR SUB-CLASS members with necessary
25 expenses incurred in the discharge of their job duties.

26 41. This Class Action meets the statutory prerequisites for the maintenance of a
27 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
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- 1 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
2 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
3 CLASS Members is impracticable and the disposition of their claims as
4 a class will benefit the parties and the Court;
- 5 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
6 issues that are raised in this Complaint are common to the
7 CALIFORNIA LABOR SUB-CLASS and will apply to every member
8 of the CALIFORNIA LABOR SUB-CLASS;
- 9 (c) The claims of the representative PLAINTIFF are typical of the claims of
10 each member of the CALIFORNIA LABOR SUB-CLASS.
11 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
12 SUB-CLASS, were non-exempt employees paid on an hourly basis who
13 were subjected to the DEFENDANT's practice and policy which failed
14 to pay the correct amount of wages due to the CALIFORNIA LABOR
15 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
16 DEFENDANT's employment practices. PLAINTIFF and the members
17 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
18 identically harmed by the same unlawful, deceptive, and unfair
19 misconduct engaged in by DEFENDANT; and,
- 20 (d) The representative PLAINTIFF will fairly and adequately represent and
21 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
22 have retained counsel who are competent and experienced in Class
23 Action litigation. There are no material conflicts between the claims of
24 the representative PLAINTIFF and the members of the CALIFORNIA
25 LABOR SUB-CLASS that would make class certification inappropriate.
26 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
27 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.
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1 42. In addition to meeting the statutory prerequisites to a Class Action, this action
2 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

3 (a) Without class certification and determination of declaratory, injunctive,
4 statutory and other legal questions within the class format, prosecution
5 of separate actions by individual members of the CALIFORNIA
6 LABOR SUB-CLASS will create the risk of:

- 7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS which
9 would establish incompatible standards of conduct for the parties
10 opposing the CALIFORNIA LABOR SUB-CLASS; or,
11 2) Adjudication with respect to individual members of the
12 CALIFORNIA LABOR SUB-CLASS which would as a practical
13 matter be dispositive of interests of the other members not party
14 to the adjudication or substantially impair or impede their ability
15 to protect their interests.

16 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
17 acted or refused to act on grounds generally applicable to the
18 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
19 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
20 whole in that DEFENDANT fails to pay all wages due. Including the
21 correct wages for all time worked by the members of the CALIFORNIA
22 LABOR SUB-CLASS as required by law;

23 (c) Common questions of law and fact predominate as to the members of
24 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
25 and violations of California Law as listed above, and predominate over
26 any question affecting only individual CALIFORNIA LABOR SUB-
27 CLASS Members, and a Class Action is superior to other available
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1 methods for the fair and efficient adjudication of the controversy,
2 including consideration of:

- 3 1) The interests of the members of the CALIFORNIA LABOR
4 SUB-CLASS in individually controlling the prosecution or
5 defense of separate actions in that the substantial expense of
6 individual actions will be avoided to recover the relatively small
7 amount of economic losses sustained by the individual
8 CALIFORNIA LABOR SUB-CLASS Members when compared
9 to the substantial expense and burden of individual prosecution of
10 this litigation;
- 11 2) Class certification will obviate the need for unduly duplicative
12 litigation that would create the risk of:
 - 13 A. Inconsistent or varying adjudications with respect to
14 individual members of the CALIFORNIA LABOR SUB-
15 CLASS, which would establish incompatible standards of
16 conduct for the DEFENDANT; and/or,
 - 17 B. Adjudications with respect to individual members of the
18 CALIFORNIA LABOR SUB-CLASS would as a practical
19 matter be dispositive of the interests of the other members
20 not parties to the adjudication or substantially impair or
21 impede their ability to protect their interests;
- 22 3) In the context of wage litigation because a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will
24 avoid asserting their legal rights out of fear of retaliation by
25 DEFENDANT, which may adversely affect an individual's job
26 with DEFENDANT or with a subsequent employer, the Class

1 Action is the only means to assert their claims through a
2 representative; and,

- 3 4) A class action is superior to other available methods for the fair
4 and efficient adjudication of this litigation because class
5 treatment will obviate the need for unduly and unnecessary
6 duplicative litigation that is likely to result in the absence of
7 certification of this action pursuant to Cal. Code of Civ. Proc. §
8 382.

9 43. This Court should permit this action to be maintained as a Class Action
10 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 11 (a) The questions of law and fact common to the CALIFORNIA LABOR
12 SUB-CLASS predominate over any question affecting only individual
13 CALIFORNIA LABOR SUB-CLASS Members;
- 14 (b) A Class Action is superior to any other available method for the fair and
15 efficient adjudication of the claims of the members of the
16 CALIFORNIA LABOR SUB-CLASS because in the context of
17 employment litigation a substantial number of individual CALIFORNIA
18 LABOR SUB-CLASS Members will avoid asserting their rights
19 individually out of fear of retaliation or adverse impact on their
20 employment;
- 21 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
22 numerous that it is impractical to bring all members of the
23 CALIFORNIA LABOR SUB-CLASS before the Court;
- 24 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
25 Members, will not be able to obtain effective and economic legal redress
26 unless the action is maintained as a Class Action;
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- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations
3 and other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA LABOR SUB-CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally
10 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making
11 final class-wide relief appropriate with respect to the CALIFORNIA
12 LABOR SUB-CLASS as a whole;
- 13 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
14 ascertainable from the business records of DEFENDANT. The
15 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
16 CLASS Members who worked for DEFENDANT in California at any
17 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to
19 bring a efficient and rapid conclusion to all litigation of all wage and
20 hour related claims arising out of the conduct of DEFENDANT as to the
21 members of the CALIFORNIA LABOR SUB-CLASS.

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

25 **[Cal. Bus. And Prof. Code §§ 17200]**

26 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**
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1 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
2 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 45. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
5 Code § 17021.

6 46. California Business & Professions Code §§ 17200, (the “UCL”) defines unfair
7 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
8 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
9 competition as follows:

10 Any person who engages, has engaged, or proposes to engage in unfair
11 competition may be enjoined in any court of competent jurisdiction. The court
12 may make such orders or judgments, including the appointment of a receiver,
13 as may be necessary to prevent the use or employment by any person of any
14 practice which constitutes unfair competition, as defined in this chapter, or as
may be necessary to restore to any person in interest any money or property,
real or personal, which may have been acquired by means of such unfair
competition.

15 Cal. Bus. & Prof. Code § 17203.

16 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
17 engage in a business practice which violates California law, including but not limited to, the
18 applicable Industrial Wage Order(s), the California Code of Regulations and the California
19 Labor Code including Sections 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802
20 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which
21 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.
22 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
23 unfair competition, including restitution of wages wrongfully withheld.

24 48. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
25 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
26 unscrupulous or substantially injurious to employees, and were without valid justification or
27 utility for which this Court should issue equitable and injunctive relief pursuant to Section
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1 17203 of the California Business & Professions Code, including restitution of wages
2 wrongfully withheld.

3 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
5 meal and rest periods, the required amount of compensation for missed meal and rest periods
6 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
7 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
8 overtime wages due for overtime worked as a result of failing to include non-discretionary
9 incentive compensation into their regular rates of pay for purposes of computing the proper
10 overtime pay due to a business practice that cannot be justified, pursuant to the applicable
11 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus.
12 Code §§ 17200, and for which this Court should issue injunctive and equitable relief,
13 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
14 withheld.

15 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
16 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
17 the other members of the CALIFORNIA CLASS to be underpaid during their employment
18 with DEFENDANT.

19 51. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
20 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
21 provide all legally required meal breaks to PLAINTIFF and the other members of the
22 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

23 52. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
24 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
25 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
26 pay for each workday in which a second off-duty meal period was not timely provided for
27 each ten (10) hours of work.
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1 53. PLAINTIFF further demands on behalf of herself and each member of the
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
3 duty paid rest period was not timely provided as required by law.

4 54. By and through the unlawful and unfair business practices described herein,
5 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
6 other members of the CALIFORNIA CLASS, including earned wages for all time worked,
7 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to
8 the detriment of these employees and to the benefit of DEFENDANT so as to allow
9 DEFENDANT to unfairly compete against competitors who comply with the law.

10 55. All the acts described herein as violations of, among other things, the Industrial
11 Welfare Commission Wage Orders, the California Code of Regulations, and the California
12 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
13 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
14 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200.

15 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
16 to, and do, seek such relief as may be necessary to restore to them the money and property
17 which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
18 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
19 unfair business practices, including earned but unpaid wages for all time worked.

20 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
21 entitled to, and do, seek a declaration that the described business practices are unlawful,
22 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
23 from engaging in any unlawful and unfair business practices in the future.

24 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
25 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
26 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
27 unabated. As a result of the unlawful and unfair business practices described herein,
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1 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
2 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
3 from continuing to engage in these unlawful and unfair business practices.

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

7 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

8 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
9 **and Against All Defendants)**

10 59. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
11 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
12 paragraphs of this Complaint.

13 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
15 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
16 to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
17 Members.

18 61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage
20 than the minimum so fixed is unlawful.

21 62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
22 wages, including minimum wage compensation and interest thereon, together with the costs
23 of suit.

24 63. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
25 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
26 of time they work. As set forth herein, DEFENDANT's policy and practice was to
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1 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS.

3 64. DEFENDANT's unlawful wage and hour practices manifested, without
4 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
5 implementing a policy and practice that denies accurate compensation to PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
7 pay.

8 65. In committing these violations of the California Labor Code, DEFENDANT
9 inaccurately calculated the correct time worked and consequently underpaid the actual time
10 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
11 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
12 benefits in violation of the California Labor Code, the Industrial Welfare Commission
13 requirements and other applicable laws and regulations.

14 66. As a direct result of DEFENDANT's unlawful wage practices as alleged
15 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
16 not receive the correct minimum wage compensation for their time worked for
17 DEFENDANT.

18 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
19 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
20 Members to work without paying them for all the time they were under DEFENDANT's
21 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
22 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
23 that they were entitled to, constituting a failure to pay all earned wages.

24 68. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for the true time they worked, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
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1 injury in amounts which are presently unknown to them and which will be ascertained
2 according to proof at trial.

3 69. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
5 time worked. DEFENDANT elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of company policy, practice and
7 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and
8 the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages
9 for their time worked.

10 70. In performing the acts and practices herein alleged in violation of California
11 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
12 CLASS for all time worked and provide them with the requisite compensation,
13 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a
15 conscious and utter disregard for their legal rights, or the consequences to them, and with the
16 despicable intent of depriving them of their property and legal rights, and otherwise causing
17 them injury in order to increase company profits at the expense of these employees.

18 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
20 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
21 provided by the California Labor Code and/or other applicable statutes. To the extent
22 minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-
23 CLASS Members who have terminated their employment, DEFENDANT's conduct also
24 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
25 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on
26 behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
27 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
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1 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory
2 costs.

3
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code § 510]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 72. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
11 paragraphs of this Complaint.

12 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
14 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
15 to pay these employees for all overtime worked, including, work performed in excess of eight
16 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
17 workweek.

18 74. Cal. Lab. Code § 510 further provides that employees in California shall not be
19 employed more than eight (8) hours per workday and more than forty (40) hours per
20 workweek unless they receive additional compensation beyond their regular wages in
21 amounts specified by law.

22 75. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
23 wages, including minimum wage and overtime compensation and interest thereon, together
24 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
25 employee for longer hours than those fixed by the Industrial Welfare Commission is
26 unlawful.

27 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
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1 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
3 including overtime work.

4 77. DEFENDANT's unlawful wage and hour practices manifested, without
5 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
6 implementing a policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
8 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
10 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
11 workweek.

12 78. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
14 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
15 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
16 violation of the California Labor Code, the Industrial Welfare Commission requirements and
17 other applicable laws and regulations. As a direct result of DEFENDANT's unlawful wage
18 practices as alleged herein, the PLAINTIFF and the other members of the CALIFORNIA
19 LABOR SUB-CLASS did not receive full compensation for overtime worked.

20 79. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to the
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
24 subject to a valid collective bargaining agreement that would preclude the causes of action
25 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself
26 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
27 negotiable, non-waiveable rights provided by the State of California.
28

1 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
3 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

4 81. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
6 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§
7 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA
8 LABOR SUB-CLASS were required to work, and did in fact work, overtime as to which
9 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
10 records and witnessed by employees.

11 82. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
15 injury in amounts which are presently unknown to them and which will be ascertained
16 according to proof at trial.

17 83. DEFENDANT knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
19 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of company policy, practice and
21 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and
22 the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

23 84. In performing the acts and practices herein alleged in violation of California
24 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
25 CLASS for all overtime worked and provide them with the requisite overtime compensation,
26 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a
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conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

85. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

87. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order

1 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
2 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
3 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
4 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
5 from time to time not fully relieved of duty by DEFENDANT for their meal periods.
6 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
7 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
8 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
9 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
10 second off-duty meal period in some workdays in which these employees were required by
11 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
12 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
13 breaks without additional compensation and in accordance with DEFENDANT's strict
14 corporate policy and practice.

15 88. DEFENDANT further violates California Labor Code §§ 226.7 and the
16 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
17 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
18 the applicable Wage Order, one additional hour of compensation at each employee's regular
19 rate of pay for each workday that a meal period was not provided.

20 89. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
23 suit.

24
25 **FIFTH CAUSE OF ACTION**

26 **For Failure to Provide Required Rest Periods**

27 **[Cal. Lab. Code §§ 226.7 & 512]**
28

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

91. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

92. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

1 [Cal. Lab. Code § 226]

2 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
3 Defendants)

4 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
5 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
6 paragraphs of this Complaint.

7 95. Cal. Labor Code § 226 provides that an employer must furnish employees with
8 an “accurate itemized” statement in writing showing:

- 9 (1) gross wages earned,
10 (2) total hours worked by the employee, except for any employee whose compensation
11 is solely based on a salary and who is exempt from payment of overtime under
12 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
13 Commission,
14 (3) the number of piecerate units earned and any applicable piece rate if the employee
15 is paid on a piece-rate basis,
16 (4) all deductions, provided that all deductions made on written orders of the
17 employee may be aggregated and shown as one item,
18 (5) net wages earned,
19 (6) the inclusive dates of the period for which the employee is paid,
20 (7) the name of the employee and his or her social security number, except that by
21 January 1, 2008, only the last four digits of his or her social security number or an
22 employee identification number other than a social security number may be shown on
23 the itemized statement,
24 (8) the name and address of the legal entity that is the employer, and
25 (9) all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee.

27 96. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
28 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other things,
gross wages earned and all applicable hourly rates in effect during the pay period and the
corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA
LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements
should reflect all applicable hourly rates during the pay period and the total hours worked,
and the applicable pay period in which the wages were earned pursuant to California Labor

1 Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and
2 other CALIFORNIA LABOR SUB-CLASS Members failed to identify such information.
3 More specifically, the wage statements failed to identify the accurate total hours worked each
4 pay period. When the hours shown on the wage statements were added up, they did not equal
5 the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2).
6 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
7 PLAINTIFF an itemized wage statement that lists all the requirements under California
8 Labor Code 226. As a result, DEFENDANT from time to time provided PLAINTIFF and the
9 other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
10 violated Cal. Lab. Code § 226.

11 97. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
12 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
14 expended calculating the correct wages for all missed meal and rest breaks and the amount of
15 employment taxes which were not properly paid to state and federal tax authorities. These
16 damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
18 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
19 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
20 226, in an amount according to proof at the time of trial (but in no event more than four
21 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
22 CALIFORNIA LABOR SUB-CLASS herein).

23
24 **SEVENTH CAUSE OF ACTION**

25 **For Failure to Reimburse Employees for Required Expenses**

26 **[Cal. Lab. Code § 2802]**

27 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
28 **Defendants)**

1 98. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
2 reallege and incorporate by this reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

4 99. Cal. Lab. Code § 2802 provides, in relevant part, that:

5 An employer shall indemnify his or her employee for all necessary
6 expenditures or losses incurred by the employee in direct consequence of the
7 discharge of his or her duties, or of his or her obedience to the directions of the
8 employer, even though unlawful, unless the employee, at the time of obeying
9 the directions, believed them to be unlawful.

10 100. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
11 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
12 CLASS members for required expenses incurred in the discharge of their job duties for
13 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
14 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
15 limited to, costs related to using their personal cellular phones on behalf of and for the
16 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
17 SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones
18 and home offices in order to perform work related job tasks. DEFENDANT's policy and
19 practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
20 members for expenses resulting from using their personal cellular phones and home offices
21 for DEFENDANT within the course and scope of their employment for DEFENDANT.
22 These expenses were necessary to complete their principal job duties. DEFENDANT is
23 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although
24 these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA
25 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse
26 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as
27 an employer is required to do under the laws and regulations of California.

28 101. PLAINTIFF therefore demands reimbursement for expenditures or losses
incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge

1 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
2 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3
4 **EIGHTH CAUSE OF ACTION**

5 **For Failure to Pay Wages When Due**

6 **[Cal. Lab. Code §§ 201, 202, 203]**

7 **(By PLAINTIFF, and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

9 102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
11 paragraphs of this Complaint.

12 1. Cal. Lab. Code § 200 provides, in relevant part, that:

13 As used in this article:

14 (a) "Wages" includes all amounts for labor performed by employees of
15 every description, whether the amount is fixed or ascertained by the
16 standard of time, task, piece, Commission basis, or other method of calculation.

17 (b) "Labor" includes labor, work, or service whether rendered or performed
18 under contract, subcontract, partnership, station plan, or other agreement if
19 the labor to be paid for is performed personally by the person demanding
20 payment.

21 103. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges
22 an employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately."

24 104. Cal. Lab. Code § 202 provides, in relevant part, that:

25 If an employee not having a written contract for a definite period quits his
26 or her employment, his or her wages shall become due and payable not
27 later than 72 hours thereafter, unless the employee has given 72 hours
28 previous notice of his or her intention to quit, in which case the employee
is entitled to his or her wages at the time of quitting. Notwithstanding any
other provision of law, an employee who quits without providing a 72-hour
notice shall be entitled to receive payment by mail if he or she so requests
and designates a mailing address. The date of the mailing shall constitute
the date of payment for purposes of the requirement to provide payment
within 72 hours of the notice of quitting.

105. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
SUB-CLASS Members' employment contract.

1 106. Cal. Lab. Code § 203 provides, in relevant part, that:

2 If an employer willfully fails to pay, without abatement or reduction, in
3 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
4 employee who is discharged or who quits, the wages of the employee shall
5 continue as a penalty from the due date thereof at the same rate until paid
6 or until an action therefor is commenced; but the wages shall not continue
7 for more than 30 days.

8 107. The employment of PLAINTIFF, and many CALIFORNIA LABOR
9 SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all
10 wages owed as required by law. Additionally, at all times during the term of PLAINTIFF's
11 employment with DEFENDANT, PLAINTIFF, and CALIFORNIA LABOR SUB-CLASS
12 Members earned and accrued vested vacation and holiday time on the date of their
13 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
14 law. The amount of vacation pay PLAINTIFF, and the other CALIFORNIA LABOR
15 SUB-CLASS Members earned and accumulated is evidenced by DEFENDANT's business
16 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
17 PLAINTIFF, and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
18 such wages at the regular rate of pay and more specifically the final rate of pay that included
19 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
20 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other
21 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
22 including all of PLAINTIFF's, and CALIFORNIA LABOR SUB-CLASS Members'
23 non-discretionary incentive compensation into the vacation wage payment calculations.
24 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
25 PLAINTIFF, and other CALIFORNIA LABOR CLASS Members would be paid vacation
26 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
27 practice, policy and procedure to deny paying PLAINTIFF, and the other members of the
28 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
29 DEFENDANT failed to pay PLAINTIFF, and the members of the CALIFORNIA LABOR
30 SUB-CLASS all vested vacation time as wages due upon employment termination, in

1 violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
2 DEFENDANT underpaid waiting time penalties to PLAINTIFF, and other CALIFORNIA
3 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
4 PLAINTIFF's, and the CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
5 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
6 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide
7 compensation for earned, accrued and vested vacation and holiday time, as well as the
8 corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
9 unlawful, unfair and deceptive practice to the detriment of PLAINTIFF, and the members of
10 the CALIFORNIA LABOR SUB-CLASS. DEFENDANT's uniform practice and policy of
11 failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday time
12 accumulated at employment termination violated and continues to violate Section 227.3 of
13 the California Labor Code.

14 108. Therefore, as provided by Cal Lab. Code § 203, on behalf of PLAINTIFF and
15 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
16 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
17 of pay as penalty for not paying all wages due at time of termination for all employees who
18 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
19 demand an accounting and payment of all wages due, plus interest and statutory costs as
20 allowed by law.

21 /
22 /
23 /

NINTH CAUSE OF ACTION

For Failure to Pay Sick Pay Wages

[Cal. Lab. Code §§ 201-203, 233, 246]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)**

1 109. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

4 110. Cal Lab. Code § 233 provides that an employer must permit an employee to
5 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
6 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick
7 pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically,
8 once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay
9 wages, which an employer must calculate and compensate based on one of two calculations:
10 (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the
11 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
12 not the employee actually works overtime in that workweek," or (ii) "Paid sick time for
13 nonexempt employees shall be calculated by dividing the employee's total wages, not
14 including overtime premium pay, by the employee's total hours worked in the full pay
15 periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and 233,
16 employees may sue to recover underpaid sick pay wages as damages.

17 111. As a matter of policy and practice, DEFENDANT pays sick pay wages to
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
19 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
20 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn non-
21 hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay wages
22 to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS at the
23 base hourly pay, as opposed to the regular rate of pay, which would consider all non-hourly
24 remuneration in addition to base hourly wages, or the rate resulting from dividing the
25 employee's total wages, not including overtime premium pay, by the employee's total hours
26 worked in the full pay periods of the prior 90 days of employment. As a result,
27
28

1 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
2 CALIFORNIA LABOR-SUB-CLASS.

3 112. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave,
4 vested sick pay wages are due and to be paid no later than the payday for the next regular
5 payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code §
6 201 provides that if an employer discharges an employee, wages earned and unpaid at the
7 time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an
8 employee is entitled to receive all unpaid wages no later than 72 hours after an employee
9 quits his or her employment, unless the employee has given 72-hour notice of his or her
10 intention to quit, in which case the employee is entitled to his or her wages at the time of
11 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
12 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab.
13 Code §§ 201-202, then the wages of the employee shall continue as a penalty from the due
14 date, and at the same rate until paid, but the wages shall not continue for more than thirty
15 (30) days. Under Cal. Lab. Code §§ 203 and 218, employees may sue to recover applicable
16 penalties.

17 113. As alleged herein and as a matter of policy and practice, DEFENDANT
18 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
19 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
20 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246, among
21 other Labor Code provisions. PLAINTIFF are informed and believe that DEFENDANT was
22 advised by skilled lawyers and knew, or should have known, of the mandates of the Labor
23 Code as it relates to PLAINTIFF' allegations, especially since the California Supreme Court
24 has explained that "[c]ourts have recognized that 'wages' also include those benefits to
25 which an employee is entitled as a part of his or her compensation, including money, room,
26 board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th
27 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails to timely pay
28

1 PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all sick pay
2 wages due, DEFENDANT is subject to applicable penalties.

3 114. Such a pattern, practice, and uniform administration of corporate policy is
4 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
5 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
6 attorney's fees, and costs of suit.

7 **TENTH CAUSE OF ACTION**

8 **For Violation of the Private Attorneys General Act**

9 **[Cal. Lab. Code §§ 2698, *et seq.*]**

10 **(By PLAINTIFF and Against All Defendants)**

11 115. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
12 herein, the prior paragraphs of this Complaint.

13 116. PAGA is a mechanism by which the State of California itself can enforce state
14 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
15 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA
16 is fundamentally a law enforcement action designed to protect the public and not to benefit
17 private parties. The purpose of the PAGA is not to recover damages or restitution, but to
18 create a means of "deputizing" citizens as private attorneys general to enforce the Labor
19 Code. In enacting PAGA, the California Legislature specified that "it was ... in the public
20 interest to allow aggrieved employees, acting as private attorneys general to recover civil
21 penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims
22 cannot be subject to arbitration.

23 117. PLAINTIFF, and such persons that may be added from time to time who satisfy
24 the requirements and exhaust the administrative procedures under the Private Attorney
25 General Act, bring this Representative Action on behalf of the State of California with
26 respect to themselves and all individuals who are or previously were employed by
27 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
28

1 party, and classified as nonexempt employees (“AGGRIEVED EMPLOYEES”) during the
2 time period of March 11, 2023 until a date as determined by the Court (the "PAGA
3 PERIOD").

4 118. On March 11, 2024, PLAINTIFF gave written notice by electronic mail to the
5 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
6 employer of the specific provisions of this code alleged to have been violated as required by
7 Labor Code § 2699.3. *See* Exhibit #1, attached hereto and incorporated by this reference
8 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
9 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
10 Section 2699.3, PLAINTIFF may pursue a representative civil action under PAGA pursuant
11 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
12 EMPLOYEES as herein defined.

13 119. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
15 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
16 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
17 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
18 required expenses, (f) failed to provide wages when due, (g) failed to provide suitable
19 seating, and (h) failed to provide gratuities, all in violation of the applicable Labor Code
20 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7,
21 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
22 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations,
23 Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s),
24 and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby
25 seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General
26 Act of 2004 as the representatives of the State of California for the illegal conduct
27 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.
28

120. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable

CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

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Dated: September 27, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demand a jury trial on issues triable to a jury.

Dated: September 27, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:
1004

March 11, 2024
CA3141

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Certified Mail #9589071052700408543298
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated in California, including any employees staffed with Merrill Lynch, Pierce, Fenner & Smith Incorporated a third party, and classified as non-exempt employees during the time period of March 11, 2023 until a date as determined by the Court. Our offices represent Plaintiff Nancy Jauregui (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Defendant”). Plaintiff was employed by Defendant in California from 2008 to August 31, 2023. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and

Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.